



Federal Communications Commission
Washington, D.C. 20554

October 10, 2007

DA 07-4189

BY CERTIFIED MAIL – RETURN RECEIPT REQUESTED

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RE: WT Docket No. 07-140, Petition of Puerto Rico Telephone Company, Inc. for Conditional Waiver

Dear Mr. Carrasquillo and Ms. Yelen:

For the reasons stated below, we hereby grant Puerto Rico Telephone Company, Inc. (PRTC) a conditional waiver of Section 22.901(b) of the Commission's Rules¹ with respect to call sign KNKA384, which requires cellular radiotelephone service licensees to provide analog service to subscribers and roamers whose mobile equipment conforms to the Advanced Mobile Phone Service (AMPS) standard (the "analog service requirement") until February 18, 2008 (the "analog sunset date").²

Background. The Commission adopted the analog service requirement in 1981 to foster nationwide roaming and the widespread availability of affordable consumer handsets.³ In 2002, the Commission determined that it was unnecessary to continue the analog service requirement indefinitely, because it had substantially achieved the Commission's goals.⁴ The Commission also found that immediate elimination of the requirement could harm specific classes of consumers, "particularly those with hearing disabilities as well as emergency-only consumers, who currently continue to rely on the availability of analog service and lack digital alternatives."⁵ The Commission determined that the analog service requirement should be phased-out gradually over a five-year period, which commenced on the

¹ 47 C.F.R. § 22.901(b).

² See Year 2000 Biennial Review – Amendment of Part 22 of the Commission's Rules to Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services, WT Docket No. 01-108, *Report and Order*, 17 FCC Rcd 18401, 18405 ¶5 (2002) ("*Analog Sunset Order*"), *Order on Reconsideration*, 19 FCC Rcd 3239 (2004). On June 15, 2007, the Commission denied a petition for rulemaking seeking a two-year extension of the analog sunset date. See *Sunset of the Cellular Radiotelephone Service Analog Service Requirement and Related Matters*, 22 FCC Rcd 11243 (2007) ("*Analog Sunset MO&O*").

³ See *Inquiry into the Use of the Bands 825-845 and 870-890 for Cellular Communications Systems*, CC Docket No. 79-318, *Report and Order*, 86 FCC 2d 469, 508 ¶93 (1981).

⁴ See *Analog Sunset Order*, 17 FCC Rcd at 18406 ¶8, and 18409-18412 ¶¶13-17.

⁵ *Id.*

effective date of the *Analog Sunset Order*, February 18, 2003.⁶ The Commission reasoned that such a transition period was necessary because digital technologies had been shown to cause interference with hearing aids and cochlear implants, and found that a five-year period should enable the development and wide-spread distribution of hearing aid-compatible digital phones.⁷ The Commission also noted that a transition period would “mitigate possible negative effects to emergency-only consumers that might otherwise occur with an immediate elimination of the analog requirement.”⁸

Waiver Petition. PRTC filed its Waiver Petition on June 15, 2007.⁹ On July 10, 2007, the Wireless Telecommunications Bureau released a Public Notice inviting interested parties to comment on the Waiver Petition.¹⁰ Comments and reply comments were due on July 31 and August 10, 2007, respectively; no party filed comments or reply comments.

PRTC operates two wireless networks—analog/TDMA and CDMA/EV-DO—in Puerto Rico under call sign KNKA384 (CMA091-San Juan-Caguas, PR), and seeks waiver of Section 22.901(b) to discontinue analog service before the analog sunset date. PRTC has a customer base of approximately 570,000, including 1,863 analog-only subscribers.¹¹ As a result of PRTC’s recent acquisition by America Movil, PRTC states that it plans to deploy “state-of-the-art 3G mobile telecommunications services throughout the island of Puerto Rico using Global System for Mobile communications [for voice] and Universal Mobile Telecommunications System (‘GSM/UMTS’)” for data transmission.¹² PRTC further states that the new GSM/UMTS network is more spectrally efficient and will “dramatically increase PRT[C]’s ability to deploy high-speed broadband services” at “substantially higher” data transfer speeds than currently available on the existing CDMA/EV-DO network.¹³ In addition, PRTC plans on increasing the overall size of its data network—from 145 to 200 cell sites—which will “expand the availability of high-speed services to remote locations across the interior of Puerto Rico where PRT[C] currently cannot offer EV-DO service.”¹⁴ PRTC further states that the new GSM/UMTS network will provide expanded roaming capabilities, particularly in Europe and South America, and will create economies of scale that will result in more competitive price plans.¹⁵ PRTC contends, however, that it cannot fully deploy its GSM/UMTS network without access to the 7.2 MHz of spectrum that is currently required to operate its analog/TDMA network.¹⁶

First, PRTC argues that requiring it to continue to provide analog service is unnecessary to serve

⁶ *Id.* and *id.* at 18414-18419 ¶¶22-30.

⁷ *Id.* at 18418 ¶28.

⁸ *Id.* at 18415 ¶24.

⁹ Petition of Puerto Rico Telephone Company, Inc. for Conditional Waiver, FCC No. 0003072684 (filed June 15, 2007) (“Waiver Petition”).

¹⁰ See “Wireless Telecommunications Bureau Seeks Comment on Petition of Puerto Rico Telephone Company, Inc. for Waiver of the Analog Service Requirement,” WT Docket No. 07-140, *Public Notice*, 22 FCC Rcd 12763 (WTB 2007).

¹¹ Waiver Petition at 6, 8.

¹² *Id.* at 5.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 6.

the underlying purpose of the analog service rule or the public interest. PRTC states that it offers a number of hearing-aid compatible digital handsets and proposes to address the needs of its subscribers with hearing disabilities by providing a free hearing aid-compatible digital phone—as well as free activation and delivery—to any existing analog subscriber with hearing disabilities.¹⁷ In addition, PRTC states that as part of its extensive outreach efforts to transition all of its remaining analog-only subscribers to its CDMA network, it has offered these subscribers free CDMA handsets, with free activation and delivery; PRTC proposes to continue these efforts as a condition of its waiver.¹⁸ PRTC further argues that a conditional waiver would serve the public interest by affording consumers access to “increased upload and download speeds, increased coverage areas, new W-CDMA services, a wider array of available applications (such as mobile TV, music and video download capabilities), more competitive pricing plans, and an increased ability to roam in other countries.”¹⁹

Second, PRTC argues that continued application of the analog service requirement to PRTC is inequitable, unduly burdensome, and contrary to the public interest because the rule requires PRTC to devote a high percentage of its spectrum (20.6 percent) to a dwindling number of analog-only subscribers (0.33 percent) and thereby prevents PRTC from offering higher-speed telecommunications services, island-wide.²⁰ PRTC notes that its analog-only subscribers are “fully protected by PRT[C]’s outreach and free handset offers.”²¹

Finally, PRTC argues that pursuant to Section 1.3, 47 C.F.R. § 1.3, good cause exists for waiver of the analog sunset requirement. Specifically, PRTC argues that the “special circumstances” of the instant case warrant a waiver and that the public interest would be served.²²

Discussion. A waiver of the Commission's rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or, in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no reasonable alternative.²³

Based upon the totality of the circumstances presented in the record before us, we find that a conditional waiver permitting PRTC to phase out analog service before the analog sunset date is warranted. We agree with PRTC that to require it to continue to provide analog service would be unduly burdensome in light of the few analog-only subscribers remaining on its network and its inability to deploy its new, island-wide GSM/UMTS network absent access to the spectrum currently being used for its analog/TDMA network. Moreover, PRTC’s plan to provide persons with hearing disabilities free digital handsets addresses the Commission’s underlying rationale for adopting the analog sunset period.

¹⁷ *Id.* at 7. PRTC states that it will deliver such handsets either to the subscriber’s home or business at no cost to the subscriber. *Id.*

¹⁸ *Id.* at 10.

¹⁹ *Id.* at 10.

²⁰ *Id.* at 11.

²¹ *Id.* at 11.

²² *Id.* at 11, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate where “special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”).

²³ See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

PRTC also will minimize the impact of decommissioning analog service, by offering free digital handsets and equipment to all of its analog-only subscribers, including emergency-only users.²⁴

In view of the foregoing, we hereby grant PRTC's Waiver Petition, subject to the following conditions, which must be satisfied before PRTC discontinues analog service:

- PRTC must identify all analog-only subscribers, and offer them CDMA handsets, free of charge, with free activation and delivery, and on service terms no less favorable than they currently receive for at least one year.
- PRTC must offer a hearing aid-compatible CDMA handset, free of charge, with free activation and delivery, to each analog-only subscriber with hearing disabilities,²⁵ and on service terms no less favorable than they currently receive for at least one year.
- At least 30 days before discontinuing analog service in any portion of its CGSA, PRTC must advise all subscribers and the general public in that portion of its service area that analog service will be discontinued. PRTC may satisfy this condition by, for example, direct mailings and telephone calls, billing inserts, and newspaper notices.
- At least 30 days before discontinuing analog service in any portion of its CGSA, PRTC must either certify that the discontinuance of AMPS service will not result in any loss of wireless coverage throughout its CGSA,²⁶ or it must file revised CGSA information consistent with Commission rules, specifically Sections 1.947(b), 22.911, and 22.953(c).²⁷

²⁴ Because we grant PRTC's Waiver Petition under our waiver rules, 47 C.F.R. § 1.925, we do not reach the question of whether PRTC has met the good cause standard contained in Section 1.3, 47 C.F.R. § 1.3.

²⁵ As part of this condition, PRTC must reasonably allow affected individuals to test PRTC's hearing aid-compliant CDMA phones for compatibility with their hearing aids.

²⁶ See *Analog Sunset MO&O*, 22 FCC Rcd 11243 at ¶49. The certification must be signed by a licensee principal and sent to the Chief, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, DC 20554.

²⁷ 47 C.F.R. §§ 1.947(b), 22.911, 22.953(c).

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Accordingly, IT IS ORDERED that, pursuant to Sections 0.131, 0.331, 1.925(b)(3) and 22.901(b) of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 1.925(b)(3) and 22.901(b), the Petition of Puerto Rico Telephone Company, Inc. for Limited Waiver of Section 22.901(b) of the Commission's Rules with respect to call sign KNKA384, filed June 15, 2007, IS GRANTED, subject to the conditions enumerated above.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau